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09/450,399	11/29/1999	ROLF BRUCK	E-40456	7581

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EXAMINER	
TRAN, HIEN THI	
ART UNIT	PAPER NUMBER
1764	/O

DATE MAILED: 12/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/450,399	BRUCK ET AL.
	Examiner Hien Tran	Art Unit 1764

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 09 October 2002.

2a) This action is **FINAL**.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) 12-24 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-24 are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 November 1999 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u>	6) <input type="checkbox"/> Other: _____

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of group I, claims 1-11 in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 12-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

### *Priority*

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Drawings*

4. The drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the drawings to comply with CFR 1.84(p)(5), e.g. they should include the reference sign(s) mentioned in the specification and vice versa.

### *Specification*

5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 5, 10-11, it is unclear as to what is intended by “jacket surface” as the carrier body does not have a jacket tube.

In claim 3 it is unclear as to what structural limitation applicants are attempting to recite, what defines the muffler casing and how the muffler casing is different from other casing.

In claim 7, line 2 “narrow” is a relative term and therefore is vague and indefinite.

In claim 10, line 5 it is unclear as to how the channels are related to the flow paths set forth in claim 1, line 5.

In claim 11, line 3 the language of the claim is directed to method limitation which renders the claim vague and indefinite as it is unclear as to what structural limitation applicants are attempting to recite.

#### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4, 6, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by WO

94/18441.

With respect to claim 1, WO 94/18441 discloses an assembly for cleaning exhaust gas comprising:

a metallic catalyst carrier body 1 without a tubular jacket (referred to Fig. 2) for installation in an exhaust pipe casing 3; said carrier body 1 having a longitudinal axis, an interior with a plurality of flow paths 9 and an outer surface; and

at least one substantially plate-shaped retaining element 2a, 2b, 2c to be fastened in said casing 3, said retaining element having an opening formed therein for receiving and securing said carrier body 1, said retaining element having a protrusion 2b, 2c surrounding only part of the outer surface of the carrier body 1, said retaining element 2a fastened directly on said carrier body 1, and said retaining element at least one holding said carrier body together in a dimensionally stable state and substantially supporting said catalyst carrier body 1 on its own.

With respect to claim 2, WO 94/18441 discloses that the carrier body has first and second parts, the exhaust pipe casing has an inflow chamber and an outflow chamber, said retaining element 2c is to be connected to the casing 3, the chambers permit the exhaust gas to flow through said carrier body from said inflow chamber into said outflow chamber (Fig. 2).

With respect to claim 3, since it is unclear as to how the muffler casing differs from the exhaust casing as set forth above, it appears that the casing 3 meets the instant casing.

With respect to claim 4, the retaining element of WO 94/18441 has two sides and the catalyst carrier body 1 protrudes substantially to the same extent from both sides 2a, 2c.

With respect to claim 6, referred to the retaining element 2a, 2b of WO 94/18441.

With respect to claim 9-11, referred to the metal catalyst carrier body 1 with channels 9 in WO 94/18441.

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Instant claims 1-4, 6, 9-11 structurally read on the apparatus of WO 94/18441.

10. Claims 1-3, 6, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Cyron et al (4,795,615).

With respect to claim 1, Cyron et al discloses an assembly for cleaning exhaust gas comprising:

a metallic catalyst carrier body 1 without a tubular jacket for installation in an exhaust pipe casing 2; said carrier body 1 having a longitudinal axis, an interior with a plurality of flow paths and an outer surface (col. 6, lines 59-63); and

at least one substantially plate-shaped retaining element 4a-c, 5a-c to be fastened in said casing 2, said retaining element having an opening formed therein for receiving and securing said carrier body 1, said retaining element having a protrusion 4a-c surrounding only part of the outer surface of the carrier body 1, said retaining element 5a-c fastened directly on said carrier body 1, and said retaining element at least one holding said carrier body together in a dimensionally stable state and substantially supporting said catalyst carrier body 1 on its own.

With respect to claim 2, Cyron et al discloses that the carrier body has first and second parts, the exhaust pipe casing has an inflow chamber and an outflow chamber, said retaining element 4a-c is to be connected to the casing 2, the chambers permit the exhaust gas to flow through said carrier body from said inflow chamber into said outflow chamber (Fig. 1).

With respect to claim 3, since it is unclear as to how the muffler casing differs from the exhaust casing as set forth above, it appears that the casing 2 meets the instant casing.

With respect to claim 6, referred to the retaining element 4a-c, 5a-c of Cyron et al.

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With respect to claim 9-11, referred to the metal catalyst carrier body 1 with channels in Figs. 2-3 of Cyron et al.

Instant claims 1-3, 6, 9-11 structurally read on the apparatus of Cyron et al.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 94/18441 or Cyron et al (4,795,615) in view of Gulati (5,376,341) and Bailey et al (4,050,903).

With respect to claim 3, as best understood, the apparatus of WO 94/18441 and Cyron et al is substantially the same as that of the instant claim, but is silent as to whether the exhaust pipe casing may be a muffler casing.

However, Gulati and Bailey et al disclose the conventionality of placing a catalytic converter inside a muffler casing.

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It would have been obvious to one having ordinary skill in the art to place the carrier body of WO 94/18441 or Cyron et al inside the muffler casing since combination of catalytic converter and muffler is known in the art as evidenced by Gulati and Bailey et al for treating the exhaust gas.

14. Claims 5, 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 94/18441 or Cyron et al (4,795,615) in view of Bailey et al (4,050,903) and Garcea (4,086,063).

With respect to claim 5, the apparatus of WO 94/18441 and Cyron et al is substantially the same as that of the instant claim, but fails to disclose whether the opening may have an elliptical structure.

However, Bailey et al disclose the conventionality of placing a catalytic converter inside a muffler casing having a retaining element with an elliptical opening (Fig. 5).

Garcea discloses provision of mounting a catalytic converter 11 inside a muffler casing having a retaining element 34 with sloped opening for obliquely configuring the body in said opening.

It would have been an obvious matter of design choice to select an appropriate for the opening structure of the retaining element, such as elliptical structure as taught by Bailey et al and sloped opening as taught by Garcea in the apparatus of WO 94/18441 or Cyron et al, since such a modification would have involved a mere change in the shape of a component, absence showing any unexpected result. A change in shape is generally recognized as being within the level of ordinary skill in the art, absence showing any unexpected results. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

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15. Claims 1-4, 6, 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcea (4,086,063) in view of WO 94/18441 or Cyron et al (4,795,615).

With respect to claims 1, 9-11, Garcea discloses an assembly for cleaning exhaust gas comprising:

a catalyst carrier body 11 for installation in an exhaust pipe casing 17, 18; said carrier body 11 having a longitudinal axis, an interior with a plurality of flow paths and an outer surface; and

at least one substantially plate-shaped retaining element 25, 34 to be fastened in said casing 17, 18, said retaining element having an opening formed therein for receiving and securing said carrier body 11, said retaining element having a protrusion surrounding only part of the outer surface of the carrier body 11 (Figs. 2-3), said retaining element fastened directly on said carrier body 11, and said retaining element at least one holding said carrier body together in a dimensionally stable state and substantially supporting said catalyst carrier body 11 on its own.

The apparatus of Garcea is substantially the same as that of the instant claim, but fails to disclose whether the catalyst carrier may be a metallic catalyst carrier body having sheet metal layers forming channels.

However, the same teachings regarding to WO 94/18441 or Cyron et al apply.

It would have been obvious to one having ordinary skill in the art to substitute the catalyst carrier body of WO 94/18441 or Cyron et al for the catalyst carrier body of Garcea for the known and expected results of obtaining the same results by different means in the absence of unexpected results.

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With respect to claim 2, Garcea discloses that the carrier body has first and second parts, the exhaust pipe casing has an inflow chamber and an outflow chamber, said retaining element 25, 34 is to be connected to the casing 17, 18, the chambers permit the exhaust gas to flow through said carrier body from said inflow chamber into said outflow chamber (Figs. 2-3).

With respect to claim 3, Garcea discloses a muffler casing comprising two half-shells 17, 18.

With respect to claim 4, the retaining element of Garcea has two sides and the catalyst carrier body 11 protrudes substantially to the same extent from both sides (Fig. 2).

With respect to claim 6, referred to the retaining element 25, 34 of Garcea.

16. Claims 5, 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcea (4,086,063) in view of WO 94/18441 or Cyron et al (4,795,615) as applied to claims 1-4, 6, 9-11 above and further in view of Bailey et al (4,050,903).

Garcea further discloses provision of mounting a catalytic converter 11 inside a muffler casing having a retaining element 34 with sloped opening for obliquely configuring the body in said opening.

The same comments with respect to Bailey et al apply.

#### Conclusion.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien Tran whose telephone number is 308-4253. The examiner can normally be reached on Tuesday-Friday from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Calderola can be reached on 308-6824. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

HT  
December 27, 2002

Hien Tran  
**Hien Tran**  
**Primary Examiner**  
**Art Unit 1764**